

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 34 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

KASHIRAM TEXTILES MILLS PVT LTD.

Appearance:

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income-tax

Appellate Tribunal, Ahmedabad Bench "C" has referred the following two questions of law for the opinion of this Court for Assessment Year 1978-79 :-

1. Whether in law and on facts, the assessee
is entitled to investment allowance under
section 32A of the Income-tax Act, 1961
on the ground that the process carried
out by the assessee amounts to
manufacturing activity ?
2. Whether in law and on facts, the assessee
is entitled to relief under section 80J
of the Income Tax Act, 1961 in respect of
Unit No. 1 as claimed ?

2. The assessee in this case is a private limited Company engaged in the business of bleaching, dyeing, printing and processing of grey cloth purchased from the market and its resale. During the period under consideration, the ITO made an addition in respect of the purchases alleged to have been made from two parties aggregating Rs.2,07,800/-. The CIT(A) held that the assessee was carrying on activity of manufacturing and, therefore, the assessee was entitled to benefit of investment allowance, but as the rates could not be verified, the CIT(A) disallowed 40% of the claim. The revenue came in appeal against the deletion of addition by the CIT(A) whereas the assessee chose not to do so for the amount retained. The Tribunal confirmed the action of the CIT(A).

3. The learned counsel for the parties state at the Bar that the controversy raised in the present reference is answered by the decision of this Court in CIT vs. J.B. Kharwar & Sons, 163 ITR 394 and also in the case of this very assessee in ITR No. 66 of 1984 decided by the Division Bench comprising C.K. Thakker, J (as he then was) and Rajesh Balia, J. (as he then was) on March 24, 1995 as well as CIT vs. Kashiram Textiles Mills Pvt. Ltd., (1999) 240 ITR 487.

In view of the decision of this Court in CIT vs. Kashiram Textiles Mills Pvt. Ltd. (Supra), we hold that the assessee is entitled to investment allowance under Section 32A of the Income-tax Act, 1961. The said question is answered in favour of the assessee and against the revenue.

4. As far as the second question is concerned, the question is squarely covered by the decision of this

Court in CIT vs. J.B. Kharwar & Sons, 163 ITR 394 wherein this Court has held that when the assessee subjects grey cloth to the process of dyeing and printing, it produces a distinct article having distinct use as distinguished from the grey cloth, though grey cloth still subsists. What is emphasized therein is that as a result of the process to which grey cloth is subjected there is transformation of grey cloth into a new commodity commercially known as a distinct and separate commodity having its own character, use and name. As observed earlier, this judgment has been followed subsequently by another bench in ITR No. 66 of 1984. Thus, having regard to the principle laid down in the above referred to decisions, we are of the opinion that the assessee is entitled to relief under Section 80J of the Income-tax Act, 1961 in respect of Unit No. 1 as claimed. The said question is also answered in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-